

1 UNITED STATES DISTRICT COURT
2 MIDDLE DISTRICT OF TENNESSEE
3 NASHVILLE DIVISION

4 UNITED STATES OF AMERICA)
5 VS) No. 3:14-cr-007-2
6 BRIAN MANOOKIAN)

8 BEFORE THE HONORABLE TODD J. CAMPBELL, DISTRICT JUDGE

9 TRANSCRIPT OF PROCEEDINGS

10 June 19, 2015

12 **APPEARANCES:**

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TRANSCRIPT PREPARED FROM NOTES OF CATHY LEIGH, OCR:

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2 (The following transcript has been prepared by Roxann
3 Harkins, Official Court Reporter, to the best of her
4 abilities from the steno notes of Cathy Leigh,
5 Official Court Reporter, who passed away August 30,
6 2019.)

7
8 The above-styled cause came to be heard
9 on June 19, 2015, before the Hon. Todd J. Campbell,
10 District Judge, when the following proceedings were
11 had, to-wit:

12
13 THE COURT: Good afternoon. We're here
14 in the case of *United States versus Brian Manookian*,
15 and the purpose of this hearing is a sentencing.
16 Previously the Court accepted the plea of guilty and
17 approved the plea agreement and it is made in part
18 under Rule 11(c) (1) (C) for a binding sentence. And
19 some sentencing issues are still reserved for the
20 Court.

21 I want to begin with Ms. Hodde to see if
22 your client has read the presentence report and if
23 there are any objections to it.

24 MS. HODDE: Yes, Your Honor. He has
25 reviewed the presentence report. We have reviewed it

1 together. There are no objections to the presentence
2 report, except that Mr. Abley and I did catch an error
3 in the presentence report that I included in my
4 sentencing memorandum which related to a fine amount
5 in this case.

6 THE COURT: Yes.

7 MS. HODDE: And I don't know if that's
8 truly an objection. It is really a correction to the
9 presentence report. The statutory maximum fine in
10 this case is a thousand dollars pursuant to the
11 misdemeanor statute that Mr. Manookian pled to.

12 THE COURT: It sounds like an objection
13 to me. I will give you both a chance to comment on
14 that. But it appears that you are correct. It
15 further appears that the plea agreement that was
16 entered into in this case had the wrong fine amount.
17 And I want to make sure that that does not change
18 anyone's opinion about going forward or whether it is
19 knowing and intelligent and voluntary.

20 So certainly that change is in favor of
21 your client. But I want to make sure that you are not
22 raising an issue about the plea itself.

23 MS. HODDE: No, Your Honor. I don't -- I
24 believe Mr. Abley and I are on the same page. And I
25 think if the Court were to look back, at the time of

1 the plea Mr. Abley provided the Court with an
2 explanation of the elements of the offense. He
3 provided correct statutory designation of a thousand
4 dollar fine. It was an oversight on our part at the
5 time of the plea drafting. It was something we should
6 have caught that we didn't catch in drafting. It has
7 not changed anything from my perspective, but I will
8 certainly let Mr. Abley speak for himself.

9 THE COURT: Okay. We're just about to
10 hear from him. Mr. Abley.

11 MR. ABELY: Thank you, Your Honor. Well,
12 there has been some confusion and changing positions
13 about the maximum amount of the fine. I think it is
14 largely academic but still worth clarifying.
15 Probation this week -- and I haven't had a chance to
16 raise this with Ms. Hodde -- pointed out that under
17 18 U.S.C. 3571, which affixes the fine amounts, it
18 would specify a maximum fine of a hundred thousand
19 dollars for a Class A misdemeanor.

20 THE COURT: And that's what's in the
21 presentence report.

22 MR. ABELY: And that's what's in the
23 presentence report. I actually, upon further
24 reflection, I think the presentence report is correct.
25 Under 3571(e) it specifies that -- I read 3571(e) to

1 mean if another statute sets a different maximum fine
2 and also expressly exempts the offense from the
3 applicability of 3571, then that maximum holds.

4 But as odd as it is, I believe that even
5 though the statute to which Mr. Manookian has pled
6 specifies a maximum fine of one thousand dollars, that
7 Congress has basically said even though we said that
8 there, we don't mean it. 3571 should carry the day.
9 And it is all a little bit confusing. Again, I think
10 it is academic here.

11 THE COURT: Well, it is not academic
12 because I have to make a finding on it. And what are
13 you to make of the general rule that specific controls
14 the general for statutory construction?

15 MR. ABELY: Well, Your Honor, I think
16 3571(e) in stating -- and this is in a general way.
17 Certainly doesn't apply to the Food, Drug and Cosmetic
18 Act or any specific act. But it states that if a law
19 setting forth an offense specifies no fine or, as in
20 this case, a fine that is lower than the fine
21 otherwise applicable under this section and such law
22 by specific reference exempts the offense from the
23 applicability of the fine, I think there the
24 reference -- I read the language by specific reference
25 to mean that the other statute has to somehow

1 acknowledge that 35 -- acknowledge the existence of
2 3571 and exhibit an intent to disregard it.

3 I am actually -- off the top of my head,
4 I am not aware of any such other statutes that set a
5 maximum fine specifically reference 3571. But in
6 terms of statutory construction, in terms of 3571(e)
7 and the principle to give purpose or meaning to all
8 parts of that subsection, I think that the two
9 requirements here, that it sets a fine that's lower
10 and that it by specific reference exempts it, I think
11 that second portion has to mean something.

12 THE COURT: Okay. I will hear from
13 Ms. Hodde.

14 MS. HODDE: Your Honor, may I take a look
15 at the statute here that Mr. Abley was --

16 THE COURT: Yes. Take your time.

17 MS. HODDE: Your Honor, the way that I
18 read this is is that this is a generic catch-all
19 maximum fine for Class A misdemeanor of not more than
20 a hundred thousand dollars. And it seems that logic
21 would apply that obviously if the misdemeanor offense
22 doesn't specify what the fine amount is, then you
23 would default to this statute to determine what the
24 potential maximum fine is.

25 But our statute does specifically provide

1 for a cap of not more than a thousand dollars or both.
2 I mean, this is similar in the sense of those statutes
3 that provide for the maximum penalties for A felonies,
4 B felonies, et cetera, and then you take a look -- if
5 you don't specify what the penalty is but, for
6 example, bank fraud is up to three years or tax fraud
7 is up to five years or ten years or whatever the
8 specific statute designates, if it didn't designate a
9 penalty, then you would default to the felony statute
10 to determine what the penalty is. I view this as is
11 in the same vein as those statutes that are kind of a
12 backup to the specific statute. That directs itself
13 towards the conduct itself. I mean, I don't know what
14 else --

15 THE COURT: You are talking about
16 maximum. This is talking about if the fine is lower
17 than what's set out in 3571, so I didn't quite follow
18 you.

19 MS. HODDE: But if the Court takes a look
20 at 3571(b) fines for individuals --

21 THE COURT: Yes.

22 MS. HODDE: -- and this is a generic
23 statute that applies based on the felony level or the
24 misdemeanor level that we're looking at. If it is a
25 felony up to \$200,000, if a misdemeanor up to not more

1 than a hundred thousand dollars. This is just a
2 generic catch-all statute.

3 THE COURT: Yes.

4 MS. HODDE: And my point is that we don't
5 need the generic catch-all statute in this case
6 because we have a specific declaration in the statute
7 that applies to the offense to which Mr. Manookian
8 pled, which is 21 U.S.C. -- the penalty provision is
9 21 U.S.C. 333(a)(1), which says that for this
10 particular violation of law you shall not be
11 imprisoned for more than one year or fined not more
12 than a thousand dollars or both. So it seems as
13 though that would govern.

14 Now in subsection E, specific rules for
15 lower fines specified in substantive provisions, I am
16 not sure what this is supposed to mean by specific
17 reference. If a law setting forth an offense
18 specifies no fine or a fine that is lower than the
19 fine otherwise applicable under this section -- which
20 is clearly what we have, a maximum fine that is lower
21 on the applicable fine under this section -- and such
22 law by specific reference exempts the offense from the
23 applicability of the fine otherwise applicable under
24 this section, the defendant may not be fined more than
25 the amount specified in the law setting forth the

1 offense.

2 I don't know how we -- I agree with the
3 Court. I mean, the general rule of statutory
4 construction is that the specific governs, not the
5 general. And this is clearly a general catch-all
6 statute. I realize this is a specific provision under
7 the general catch-all statute, but it still -- it is
8 hard to reconcile that the specific statute to which
9 Mr. Manookian pled has a fine of not more than a
10 thousand dollars but the generic fine of up to a
11 hundred thousand dollars could possibly be applicable.
12 I mean, it just doesn't really reconcile. I know this
13 is not very helpful to the Court.

14 THE COURT: Which was passed in law
15 first?

16 MS. HODDE: Well, it looks like this
17 statute was passed in 1984 and then amended several
18 times as late as 1995.

19 THE COURT: What do you mean, this?

20 MS. HODDE: This the generic statute,
21 18 U.S.C. 3571.

22 THE COURT: Okay.

23 MS. HODDE: And the 21 U.S.C. 333 was
24 passed originally in 1970 and has been amended as
25 recently as January 1, 2015. So the specific was in

1 place before the general was in place.

2 THE COURT: Are you talking about
3 Section 331 or Section 333?

4 MS. HODDE: 21 U.S.C. 333.

5 THE COURT: And it was last amended
6 when?

7 MS. HODDE: It looks like, based on what
8 I have in front of me, it was last amended January 1,
9 2015.

10 THE COURT: That's what I have. Okay.

11 MS. HODDE: I would argue to the Court
12 that the specific penalty set forth in 18 U.S.C. 333
13 is the appropriate penalty in this case. It is up to
14 a thousand dollars. Now, as to --

15 THE COURT: Well, it is complicated by
16 the fact that the crime of conviction ended in 2009.
17 But we'll put an asterisk there.

18 MS. HODDE: I don't think this particular
19 section was what was amended in 2015, it doesn't look
20 like, but I didn't also print out the full legislative
21 history on the statute. I didn't anticipate getting
22 into this debate with the Court. My last discussion
23 with Mr. Abley was prior to his sentencing filing in
24 this case, which he agreed with me, that the statutory
25 penalty was correct. So this is an evolution this

1 afternoon for me.

2 THE COURT: Okay, thank you.

3 Mr. Abley, anything else?

4 MR. ABELY: Your Honor, I would just add
5 that I would tend to agree with Ms. Hodde. I don't
6 know where exactly this leaves us that the Section 333
7 that sets out the \$1,000 fine is hard to reconcile
8 with that general fine provision. Again, I assume the
9 Congress must have meant something when they specified
10 a maximum fine of \$1,000 in that statute. So I agree
11 with her, it is difficult to reconcile the two.

12 THE COURT: Okay, thank you. I am
13 finding that the maximum fine is a thousand dollars.
14 It is precisely in the section that provides the
15 penalties for Section 331. Section 333(a)(1)
16 expressly states that the imprisonment must be for not
17 more than one year or fine not more than a thousand
18 dollars.

19 Section 3571 is in conflict with that. I
20 think the specific controls the general. And if not,
21 this is a classic case of not adequate notice of what
22 the penalty is. Similar to Caligula putting the laws
23 of ancient Rome on the top of buildings where nobody
24 could read them, and this has the same effect.

25 So I am finding that it is a thousand

1 dollars in this case because the very statute that
2 applies sets the fine amount. And it is more recently
3 amended than the general statute.

4 Any objections?

5 MS. HODDE: No, Your Honor.

6 MR. ABELY: No, Your Honor.

7 THE COURT: Okay. I am going to make
8 some findings, then, for the record. Starting with
9 the offense level computations, the record should
10 reflect I am aware that the guidelines are advisory,
11 not mandatory. Beginning with a base offense level of
12 6 for the pertinent guideline. There is a cross
13 reference and the cross-reference directs the
14 guideline provision for fraud to be used, and that's
15 also a base offense level of 6.

16 There is a 14-level enhancement because
17 less than -- excuse me, more than \$400,000 but less
18 than \$1 million was involved. And there is a
19 three-level reduction for acceptance of responsibility
20 for a total offense level of 17.

21 In terms of criminal history, there is
22 Criminal History Category I. Mr. Manookian has no
23 criminal history points.

24 In terms of the guidelines, the custody
25 provision is controlled by statute. The maximum term

1 of imprisonment is one year. If the guidelines apply,
2 it would be a greater amount, would be 24 to 30 months
3 but clearly the guideline provision becomes the
4 statutory provision because of the statutory maximum,
5 which is one year.

6 Supervised release provision also --
7 since this is a misdemeanor, Class A misdemeanor, it
8 is a supervised release term of one year with the
9 guidelines.

10 Probation under the guidelines is not an
11 eligibility because of the Zone D, but by statute
12 there is eligibility for up to five years.

13 And the fine range we just talked about.
14 And I am making the finding this is statutorily
15 limited to \$1,000. And there is a \$25 special
16 assessment.

17 Any objection regarding any of that?

18 MS. HODDE: No, Your Honor.

19 MR. ABELY: No, Your Honor.

20 THE COURT: Mr. Abley, would you like to
21 introduce any proof?

22 MR. ABELY: No, Your Honor.

23 THE COURT: Ms. Hodde, would you like to
24 introduce any proof?

25 MS. HODDE: No, Your Honor.

1 THE COURT: I need to inform
2 Mr. Manookian that he has a right to address the Court
3 if he wants to. If he does not want to, that's his
4 right as well. In other words, it is his choice. He
5 can be thinking about that and talking to his lawyer
6 as I call upon the government to state its position
7 regarding sentencing and then I'll turn to the
8 defendant.

9 MR. ABELY: Thank you, Your Honor.

10 The government recommends a sentence of a
11 term of probation of one year with supervision to
12 include a period of home confinement of nine months,
13 and in addition a fine of \$1,000. And the statutorily
14 required special assessment, which I understand
15 Mr. Manookian has already paid.

16 THE COURT: Can I just ask you one
17 interpretive question?

18 MR. ABELY: Of course.

19 THE COURT: The presentence report talks
20 about positive monthly cash flow. But the total
21 monthly cash flow is in parentheses, which normally
22 means negative. I am looking at page 19, if it is
23 helpful, paragraphs 78, the end of. On page 18 under
24 total net worth it is a negative amount, I interpret
25 it. So it seems like the presentence report is

1 internally inconsistent, and I just wanted to know
2 what I missed.

3 MR. ABELY: And I am sorry, Your Honor, I
4 see the portion that shows the negative monthly cash
5 flow. With what were you contrasting that?

6 THE COURT: Paragraph 80, based on the
7 defendant's positive monthly cash flow, it says. It
8 is a quote.

9 MR. ABELY: I agree, Your Honor. It
10 certainly seems, from the financial condition section,
11 that there is a negative monthly cash flow.

12 THE COURT: Kind of like the two
13 statutes.

14 MR. ABELY: Yes. Something else in
15 conflict. Yes, Your Honor.

16 THE COURT: So the conundrum continues.
17 Thank you. I just wanted to make sure I didn't
18 misread it.

19 MR. ABELY: I don't believe so. Thank
20 you.

21 THE COURT: Ms. Hodde, I realize that
22 the fine discussion is extending into time longer than
23 perhaps other things of importance to you, but I would
24 want you to address this as to how you reconcile, if
25 you do, that the presentence report talks about

1 positive monthly cash flow but expresses it in
2 negative number.

3 MS. HODDE: He doesn't have a positive
4 monthly cash flow, clearly. I mean, the negative
5 number reflects a negative cash flow. I think if the
6 Court were to take a look at the cash flow in the PSR,
7 what the Court would see is that the cash flow is
8 driven, to large extent, by something I am going to
9 mention here in a second, which is this collateral
10 civil litigation that he is involved in.

11 THE COURT: Nashville Armory?

12 MS. HODDE: Correct.

13 THE COURT: What is that? Is that a
14 nightclub?

15 MS. HODDE: No, Your Honor. It is a gun
16 range over off of I-65 in the Brentwood area. It is
17 one of the -- I think it is the only five-star
18 accredited gun range in Tennessee. Mr. Manookian is
19 one of two partners in that business and they have
20 been in ongoing litigation for years now.

21 Actually, they formed the business and
22 then very shortly after forming the business they
23 began litigation about what their partnership meant
24 and how proceeds from that business were to be
25 distributed. So they have been in litigation far

1 longer than they were ever happily in business
2 together.

3 I think that is the thing that impacts
4 cash flow. The fact that he is spending so much
5 out-of-pocket to pay for civil attorneys fees in the
6 Nashville Armory case. What I suspect probation meant
7 by talking about prospective future income is
8 Mr. Manookian has recently started a law practice that
9 is gaining momentum. I think that you know he is
10 hopeful that his cash flow situation is going to be
11 positive. But also there is hope on the horizon that
12 the Nashville Armory litigation will come to an end
13 and that expense won't be there either. So without
14 speaking for probation, what I suspect is that that is
15 what they were trying to convey.

16 THE COURT: Well, I understood he was --
17 his income came from something else than law practice.
18 Maybe I misread this. It talked about his income
19 having the potential of going up. And let me focus on
20 that for a moment. In Footnote 5, the defendant
21 reported that his salary is expected to significantly
22 increase throughout the year due to anticipated
23 increase in monthly earnings. And there was some
24 other reference too. That was at least the second
25 one.

1 MS. HODDE: That relates to his law
2 practice.

3 THE COURT: Okay. Let me ask you this
4 as for prospective law practice. This is a
5 misdemeanor. And do you expect the Tennessee Board of
6 Professional Responsibility will allow Mr. Manookian
7 to continue practicing law or do you expect that to be
8 in doubt?

9 MS. HODDE: I believe that they will
10 continue to allow Mr. Manookian to practice law. This
11 is not a crime of dishonesty to which Mr. Manookian
12 has pled. It is a strict liability crime, if the
13 Court were to do a -- and I am looking at it from the
14 Board of Professional Responsibility's -- through
15 their lens.

16 THE COURT: What I am looking at is
17 whether he is going to have the ability to pay a fine.
18 That's my interest.

19 MS. HODDE: I don't know how to answer
20 that. Obviously the board will answer that over time.
21 I mean, he has been in touch with the board. He is
22 responsive to the board. He self-reported to the
23 board.

24 I do not anticipate that the board is
25 going to take his license, but I could be wrong about

1 that. I seriously doubt that I am wrong about that
2 given the fact that this is not a crime of dishonesty.
3 And the board obviously takes that very seriously.

4 THE COURT: I interrupted you. I am
5 sorry.

6 MS. HODDE: That's how I view this. I
7 don't believe that they are going to take his license.
8 I believe he is going to be continuing to practice
9 law, given the fact that this is not a crime of
10 dishonesty.

11 THE COURT: Okay. Here the business is
12 described as Cummings Manookian, PLC. Is that the law
13 firm?

14 MS. HODDE: It is.

15 THE COURT: Okay. All right. Now I am
16 straight on that. Okay.

17 MS. HODDE: So, Your Honor --

18 THE COURT: And I apologize for
19 misunderstanding the Nashville Armory. I have had
20 various incidents at Nashville Armory over the years.

21 MS. HODDE: I may be vaguely familiar
22 with some of the experiences you are referencing, but
23 I won't confess to that.

24 THE COURT: One Armory allowed the
25 entire Vice Lord gang to hold a party.

1 MS. HODDE: I remember that. I was in
2 that case, I believe.

3 THE COURT: That was an odd decision,
4 but that's only one of many Armorys that have come
5 this way.

6 MS. HODDE: Let's be clear that was not
7 the gun range.

8 THE COURT: I am not suggesting that was
9 the case here, but I just wanted to make sure that's
10 that I knew that's what it was.

11 MS. HODDE: It is not the same Nashville
12 Armory. That actually, so the Court is clear, is a
13 facility also out on I-65.

14 THE COURT: By Sidco Drive.

15 MS. HODDE: I think it is an ROTC owned
16 facility, military owned.

17 THE COURT: It is, which makes the
18 decision to rent it out to a violent gang even more
19 interesting.

20 MS. HODDE: It does.

21 Your Honor, on this case, though, this is
22 a case when Mr. Manookian was charged originally and,
23 of course, the superseding indictment also alleges the
24 same offenses, which I believe that Mr. Abley is going
25 to be dismissing today.

1 He was charged with various violations of
2 FDA regulations related to the sale and distribution
3 of Melanotan II between 2007 and 2009 by the company
4 Melanocorp, which Mr. Manookian was involved with
5 along with his father, Ed Manookian, who was the
6 company principal, and his sister, Karen Manookian,
7 who was more of a hands-on daily worker in the
8 business. And they also had an additional employee
9 there who also was working selling Melanotan II within
10 the States but primarily abroad.

11 And this was a case that was indicted on
12 the eve of the statute of limitations. Mr. Manookian,
13 as the Court is well-aware, is a 33-year-old gentleman
14 who is very well-educated, very well-spoken. He went
15 to Vanderbilt Law School. He is a practicing
16 attorney. He's admitted to practice in this court.

17 And he is somebody that, you know, has
18 been through a lot in the last several years. He's
19 had a couple of failed business ventures. The
20 Nashville Armory is actually a wildly successful
21 business, but he's had a terrible dispute with his
22 business partner in that ongoing litigation.

23 He's been through additional litigation
24 in the form of a divorce recently. The marriage
25 didn't last long, but the divorce has lasted a very

1 long time, and that is finally in the books as well.

2 And like I said, Mr. Manookian has been
3 engaged in litigation for a very long time related to
4 the Nashville Armory. Because of that civil
5 litigation and the very aggressive and active
6 misinterpretations of everything that has happened in
7 this case by the civil litigants in the Nashville
8 Armory case, every time something happens here it goes
9 and gets kind of misreported. And as a criminal
10 defense lawyer every time I see what happens in the
11 Nashville Armory case I say to myself, these people
12 don't understand federal criminal statutes.

13 Essentially because of that kind of prolific
14 misreporting of what happens in this case, I have
15 advised Mr. Manookian not to allocute today for the
16 sake of not having anything additional on the record
17 today that would be then misreported. So he is going
18 to decline, if he takes my advice, and not allocute
19 today.

20 THE COURT: Well, it is his choice. I
21 don't have any expectation. Simply an opportunity if
22 he wants it.

23 MS. HODDE: The Court has already
24 observed that Mr. Manookian has no criminal history
25 points in this case. He is a Criminal History

1 Category I. He has no history of drug and alcohol
2 abuse. He was raised in an excellent home with two
3 loving parents.

4 And the parties in this case, after
5 sitting down and working very hard over an extended
6 period of time, came up with what we believe was a
7 very fair and accurate resolution of how this case
8 should play out for Brian Manookian.

9 And that was to plead him to a
10 misdemeanor offense that was a strict liability crime
11 and one that is not a crime of dishonesty. And
12 Mr. Abley and I are on the same page about that.
13 We're more on the same page than we were 30 minutes
14 ago on the fine issue, apparently, but we have
15 discussed it. We both agree that it is a strict
16 liability crime and it is not a crime of dishonesty.

17 That was something that we very carefully
18 examined when we chose this particular offense to
19 plead Mr. Manookian to. It is, of course, a
20 misdemeanor offense as this Court is well aware. And
21 I would ask the Court to impose a sentence that we
22 have agreed to in the plea agreement.

23 I would ask the Court to impose a
24 12-month period of probation with nine months home
25 detention as a special condition of probation without

1 electronic monitoring was our agreement. We have paid
2 the \$25 statutory mandatory special assessment. We
3 paid that today on the way into the courtroom. And,
4 of course, he would have the statutory fine as the
5 Court has held up to a thousand dollars.

6 I certainly understand the Court's
7 concern about imposing fines for somebody that appears
8 in a PSR to have a negative cash flow. I know that is
9 not something that the courts typically do when you
10 show a negative cash flow. Unfortunately, I think
11 that's going to have to be something the Court
12 determines. We agree that the statutory fine is up to
13 a thousand dollars. And I would ask the Court to
14 impose a fine appropriately as the Court measures it.
15 Thank you.

16 THE COURT: Mr. Abley, anything else?

17 MR. ABELY: No. Thank you, Your Honor.

18 THE COURT: It is the duty of the Court
19 to impose a sentence that's sufficient but not greater
20 than necessary. In order to do that, I need to look
21 at the Section 3553 factors. I am going to walk
22 through those and then form an opinion and impose
23 sentence.

24 The beginning point here is that
25 Mr. Manookian has entered into an 11(c)(1)(C) plea

1 agreement for probation of one year followed by nine
2 months of home confinement not on electronic
3 monitoring. And the Court accepted the plea of guilty
4 and approved the plea agreement and I reaffirm that at
5 this time.

6 And in terms of what the parties are
7 requesting, the parties are in agreement that the
8 agreed sentence should be imposed. There is a little
9 tension between them about what the fine should be,
10 but that's a matter for determination for the Court
11 and not part of the plea agreement.

12 The nature and circumstances of the
13 offense. The crime of conviction is a misdemeanor.
14 Count 7, which is introduction of an unapproved new
15 drug in violation of 21 U.S.C. Section 331(d) and that
16 is the crime of conviction. As part of the plea
17 agreement, Counts 1, 2 and 4 through 6 will be
18 dismissed at the conclusion of this sentencing.

19 History and characteristics of the
20 defendant. Mr. Manookian is approximately 33 years
21 old. He is a well-educated man. He's got a JD degree
22 from Vanderbilt. His father and sister are
23 co-defendants in this case. And he is currently
24 self-employed at Cummings Manookian, which is a law
25 firm.

1 In terms of the seriousness of the
2 offense, of course, all federal crimes are serious.
3 That's why federal courts exist. And having made that
4 point, this is among the less serious of the offenses
5 I see. It is a misdemeanor offense. Not to detract
6 from the criminal offense, but it is rare that there
7 is a misdemeanor that I preside over.

8 Respect for the law. Mr. Manookian has
9 no criminal history points. He is in the fairly rare
10 position of not graduating from the state court to
11 federal court based on his criminal history points and
12 he has zero.

13 Just punishment is really an aggregation
14 of all of this.

15 Deterrence. There is specific deterrence
16 and general deterrence. The agreed sentence is
17 sufficient to accomplish the goal of specific
18 deterrence. In terms of general deterrence, the
19 troubling part about this case deals with the conduct
20 of co-defendant in communications about essentially
21 tying up the federal government in court.

22 More financially rewarding than ceasing
23 business. And there is no indication that
24 Mr. Manookian was part of those comments, and so I
25 think there is specific. The general deterrence is

1 specifically taken into account in this agreed
2 sentence.

3 Protect the public. The Court is aware
4 of the need to do that. This business is no longer
5 operating.

6 Needed educational or vocational
7 training, medical care or other correctional
8 treatment, that doesn't apply.

9 Kinds of sentences available I have
10 identified. The advisory guideline range I have
11 identified. Policy statements, there is not anything
12 that's particularly controlling.

13 Unwarranted sentencing disparities. That
14 is an issue that the Court has considered, and I am
15 aware of sentences generally having presided over 19
16 plus years of them and, of course, sentences that are
17 imposed nationwide. And this is consistent with them
18 and not unwarranted sentencing disparities.

19 And restitution is not an issue.
20 So those are the factors that the Court is going to
21 take into account.

22 And Mr. Manookian, I am going to impose
23 the agreed sentence of one year of probation followed
24 up to nine months -- excuse me, followed by nine
25 months, followed by nine months in home detention, and

1 that's the first nine months of the one-year term of
2 probation. And there will be no electronic monitoring
3 at this time. Of course, if there is subsequent
4 violation, that would be reconsidered.

5 And the following special conditions
6 apply to the conditions of supervision in addition to
7 the first nine months on home detention. You are
8 prohibited from owning, carrying or possessing
9 firearms, destructive devices or other dangerous
10 weapons.

11 You have to furnish financial records to
12 the probation office upon request.

13 You are barred from engaging in any
14 occupation or profession in which you sell or
15 distribute peptides or skin care products.

16 And you are ordered to pay a fine
17 totaling \$1,000. I have considered your cash flow and
18 income, and I am convinced that given your financial
19 condition you can pay a \$1,000 fine. That is due
20 immediately.

21 If for some reason you are not able to
22 pay it immediately, then you do have to pay at least
23 ten percent of your gross monthly income. No interest
24 shall accrue on the fine as long as you are in
25 compliance with any payment schedule dictated by the

1 Probation Office.

2 Bear with me for one second. I want to
3 discuss this so that we have clear guidance on it.
4 The probation office recommended the condition of
5 firearm restriction, and no party has objected to
6 that. But the fact that the defendant is a part owner
7 in the Nashville Armory, which is a gun facility, I
8 wanted to see what the parties had by way of
9 expectation of how that would be implemented so we
10 make sure that there are no inadvertent mistakes.

11 MS. HODDE: Your Honor, we addressed that
12 in the context of pretrial supervision, and what we
13 came up with was we structured some language on the
14 release conditions that addressed Mr. Manookian's
15 business. I was also concerned about that prohibition
16 on pretrial release given his business.

17 THE COURT: Here is why I am raising it.
18 I want to make sure that there is no what is
19 considered -- would be considered indirect possession
20 of firearms by almost a virtual ownership interest.
21 That's not what I intend.

22 MS. HODDE: I appreciate the Court
23 clarifying that. I would also like to clarify one
24 additional thing that this firearm prohibition is for
25 the purpose of probation safety during supervision.

1 This is not something -- he is not a prohibited
2 person --

3 THE COURT: He is not a felon.

4 MS. HODDE: -- of 18 U.S.C. 922(g) or
5 those misdemeanor provisions that make you a
6 prohibited person under that statute as well.

7 THE COURT: Well, just to be clear -- and
8 I want to hear from Mr. Abley. What I have in mind is
9 Mr. Manookian physically possessing or indirectly
10 controlling firearms at his direction rather than
11 globally owning a business. Mr. Abley, what do you
12 have in mind? I just want us to be clear so that if
13 we get into a revocation proceeding, we're discussing
14 it now rather than later.

15 MR. ABELY: I can understand that,
16 Your Honor, and I agree. And I agree with I think
17 what Ms. Hodde was alluding to regarding the purpose
18 of this special condition. And I think everybody in
19 the courtroom wants to craft this in a way that allows
20 Mr. Manookian to continue his ownership of the
21 Nashville Armory in such a way that it won't result in
22 a violation of his conditions.

23 Am I correct in interpreting Your Honor's
24 recent comments as meaning that you want to revise the
25 wording slightly of the condition you read out

1 earlier?

2 THE COURT: I just want to make sure
3 everyone has a common understanding of this general
4 provision that's virtually imposed in every case. We
5 have -- and, frankly, the standard conditions of the
6 Court also deal with not possessing firearms. So it
7 is really imposed in two ways. And what I am
8 interpreting this to mean in this instance is that
9 Mr. Manookian should not have personal possession of
10 firearms. Or -- well, I guess, that's what I really
11 mean. Is that what you have in mind?

12 MR. ABELY: It is, Your Honor.

13 THE COURT: Possession can be indirect,
14 and that's the thing I want to clarify.

15 MR. ABELY: Certainly. I think we're in
16 agreement that what this prohibits is personal
17 possession. What this does not prohibit is his owning
18 a corporate entity that may itself, separate and apart
19 from the person of Mr. Manookian, possess a firearm.

20 THE COURT: Now that I am looking at the
21 wording of this -- and I apologize for rethinking it,
22 but I am inclined to revise this to say the defendant
23 is prohibited from personally carrying or possessing
24 firearms, ammunition, destructive device or other
25 dangerous weapons, deleting the word owning because

1 that could be prone to misinterpretation in this
2 factual setting.

3 MR. ABELY: I think that is more clear.
4 I agree.

5 THE COURT: Is that acceptable to the
6 government? Ms. Hodde, I assume that's closer to what
7 you had in mind.

8 MS. HODDE: It is. And I just want to be
9 clear that this is for the period that he is on
10 probation, for the one-year period of probation.

11 THE COURT: Correct. These are special
12 conditions of supervision that apply for the one-year
13 period of probation. And what I am trying to guard
14 against is a misunderstanding that we end up in a
15 revocation over unanticipated consequences, so it is
16 just to have some clarity in this.

17 So I am going to restate this to be the
18 defendant is prohibited from personally carrying or
19 possessing firearms, ammunition, destructive devices
20 or other dangerous weapons. Bear with me, change
21 something else.

22 And I am going to change the standard
23 condition of the Court to read the defendant shall not
24 personally possess a firearm, ammunition, destructive
25 device or other dangerous weapon. So that that is

1 clear. And that's the condition that is imposed by
2 default by statute, and so I am tailoring it to this
3 particular case.

4 So speaking of the standard conditions of
5 the Court, I want to mention those as well, which is
6 while on probation, Mr. Manookian cannot commit
7 another federal, state or local crime. He cannot
8 leave the judicial district without permission. He
9 has to report as directed to the probation office. He
10 has to be truthful in all answers to the inquiries of
11 the probation office. He has to meet his family
12 responsibilities. He has to work at a regular
13 occupation unless excused. He has to notify the
14 probation officer at least ten days prior to any
15 change of residence or employment. He has to refrain
16 from excessive use of alcohol and cannot use or
17 possess any controlled substances.

18 Mr. Abley, do you want to state your
19 position about whether this should be a drug testing
20 condition?

21 MR. ABELY: Your Honor, I am not aware of
22 any facts that would make such a condition
23 appropriate. If I recall correctly, there was such a
24 provision in pretrial release conditions, and
25 Mr. Manookian has had no issues being on pretrial

1 release.

2 THE COURT: Okay, thank you. Ms. Hodde.

3 MS. HODDE: Mr. Abley is correct. He has
4 taken several drug screens while on pretrial
5 supervision. Has always passed those, and I request
6 the Court not impose that as a condition of probation.
7 There is no indication that that is an issue at all.

8 THE COURT: Okay. I am going to waive
9 the drug testing condition as part of the judgment.
10 But impose the condition that the defendant refrain
11 from excessive use of alcohol and cannot use or
12 possess any unauthorized controlled substances or
13 illegal controlled substances. Cannot frequent places
14 where controlled substances are sold or used. Cannot
15 associate with persons engaged in criminal activity.
16 He has to permit the probation officer to visit him
17 and confiscate any contraband that's in plain view.

18 He has to notify the probation officer
19 within 72 hours of being arrested or questioned by law
20 enforcement. He cannot act as an informer without
21 Court permission. He has to notify third parties of
22 risks that may be occasioned by his criminal record.
23 As I indicated, I am waiving the drug testing
24 requirement.

25 And I have changed the standard firearm

1 condition to be that he cannot personally possess a
2 firearm, destructive device or other dangerous weapon.
3 And he has to notify the U.S. Attorney's office within
4 30 days of any change of name or residence until all
5 monetary sanctions are paid.

6 As I indicated, there is a thousand
7 dollar fine imposed. The \$25 special assessment is
8 hereby imposed. And, of course, if he's paid it, he
9 should get credit for it. Restitution is not an
10 issue. Forfeiture is not an issue.

11 I need to advise Mr. Manookian of his
12 right to appeal. I am going to hand him a notice of
13 appeal form through the court officer. You have 14
14 days to file a notice of appeal. If you are unable to
15 pay the cost of an appeal, you may appeal as a pauper.
16 If you direct your lawyer to file a notice of appeal,
17 your lawyer will. If you ask the clerk of court to
18 file, the clerk will. Again, you have 14 days to file
19 a notice of appeal.

20 This question is directed to the lawyers.
21 Do the parties have any objections to the sentence
22 just pronounced that have not been previously
23 raised? That's the question required by *United States*
24 *versus Bostic*.

25 MS. HODDE: No, Your Honor.

1 MR. ABELY: No, Your Honor. And
2 Your Honor alluded to this earlier, but I did just
3 want to formally move for dismissal of Counts 1, 2, 4,
4 5 and 6 of the superseding information.

5 THE COURT: Okay. Counts 1, 2, 4
6 through 6 are dismissed as part of the plea agreement
7 and on the motion of the government.

8 Anything else that we need to discuss
9 today?

10 MS. HODDE: No, Your Honor. Thank you.

11 MR. ABELY: No, Your Honor. Thank you.

12 THE COURT: Okay. Thank you. Judgment
13 will be entered as stated. Thank you.

14 (Which were all of the proceedings had in
15 the above-captioned cause on the above-captioned
16 date.)

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REPORTER'S CERTIFICATE PAGE

I, Roxann Harkins, Official Court
Reporter for the United States District Court for the
Middle District of Tennessee, in Nashville, do hereby
certify:

That I prepared this transcript
from the steno notes of Cathy Leigh, Official Court
Reporter, when the proceedings held in open court on
June 19, 2015, in the matter of UNITED STATES OF
AMERICA v. BRIAN MANOOKIAN , Case No. 3:14-cr-007-2 ;
and that the foregoing transcript is a true and
accurate transcript to the best of my abilities.

This is the 20th day of November, 2019.

s/ Roxann Harkins_____
ROXANN HARKINS, RPR, CRR
Official Court Reporter